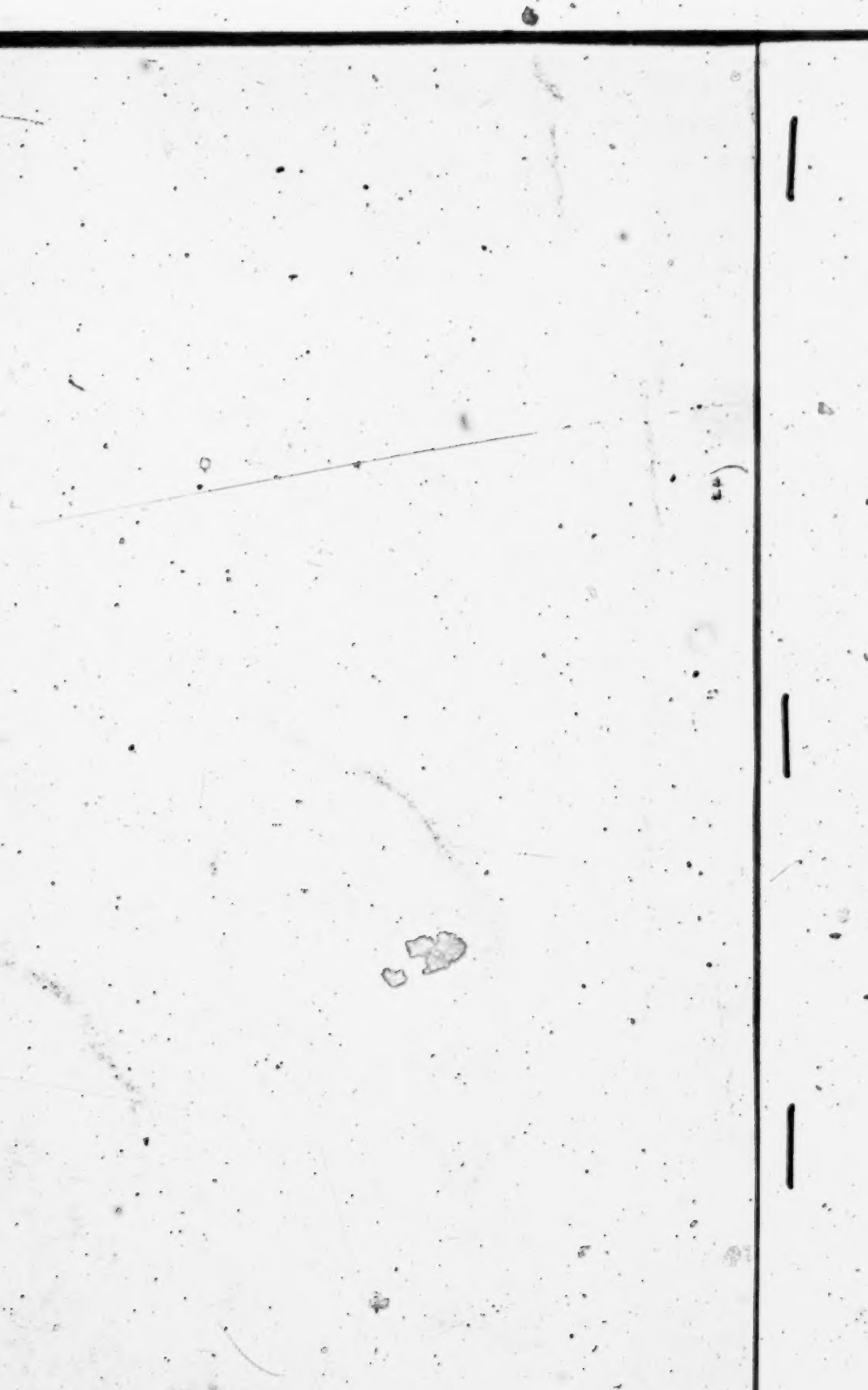

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No. 290

FILED
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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

CROWN COAT FRONT CO., INC.,
Petitioner,

v.

UNITED STATES OF AMERICA.

PETITIONER'S SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Pursuant to Rule 24.5 petitioner files this supplemental brief calling attention to a decision of the United States Court of Claims rendered July 17, 1968 following the filing of this petition for certiorari on July 15, 1968.

QUESTION PRESENTED

Whether equitable adjustment of the contract price under the standard Changes article of a Government supply contract is limited to direct costs, whereas a judicial action for breach of contract recovers all increased costs and expenses resulting from Government fault.

REASON FOR ALLOWANCE OF WRIT

The Court of Appeals cited as a reason for denying petitioner's motion for leave to amend, that it *"had offered as its claim three different figures at three different times. Originally in 1962, it sought $25,270.01 in the Court of Claims; in 1963, in the district court, it asked for $9,500; finally, its proposed amended complaint sought $19,556.03"* (App., *infra*, p. 19). The Court of Appeals rejected petitioner's explanation that its 1962 suit was for reformation of the supplemental agreement under which $270.01 was paid, and $25,000 damages for unreasonable delay; that its 1963 District Court action seeking $9,500.00 was for direct costs, increased overhead expenses, due under equitable adjustment of the contract price pursuant to the Changes article; and that its proposed amendment seeking $19,556.03 was for all its increased costs and expenses, $9,500.00 increased overhead expenses, and loss of productivity of labor, $.112 per unit, for 89,786 units, $10,056.03, totalling $19,556.03. See Petition for Rehearing at pp. 3-4, Record pp. 433-4.

The United States Court of Claims on July 17, 1968 decided *Red Circle Corporation v. The United States*, No. 430-66 and there said, Slip op. 9:

> "We have held, and now affirm, that jurisdiction is vested in the Board under either the standard Changes or Changed Conditions Articles, depending upon the circumstances, to equitably adjust the contract price for the direct costs, if any, flowing from defective plans and specifications. Delay damages resulting from government fault in such cases is treated separately as a breach of contract, initially redressable in court, unless there is that type of Suspension of Work Clause inserted in the contract which converts the cause of action to one 'arising under' the contract. See generally, *Phillips Constr. Co. v. United States*, Ct.Cl. No. 334-63, decided May 10, 1968; *Clack v. United States*, Ct.Cl. No. 155-63, decided May 10, 1968; *Jefferson Constr. Co. v. United States*, Ct.Cl. No. 81-65, decided April 19, 1968; and *Maxwell Dynamometer Co. v. United States*, 181 Ct.Cl. 607, 386 F.2d 855 (1967)."

There is a clear conflict present. The Court of Appeals brushed aside and ignored the rule of damages cited by petitioner and the United States Court of Claims has now clearly established such rule of damages.

This issue is constantly recurring and the conflict should be settled by this Court.

Respectfully submitted,

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